



## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**[Docket No. DOT-OST-2021-0123]**

### **Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws**

**AGENCY:** Department of Transportation – Office of the Secretary.

**ACTION:** No FEAR Act Notice.

**SUMMARY:** This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). In doing so, the Department of Transportation notifies all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination and Whistleblower Protection Laws.

**FOR FURTHER INFORMATION CONTACT:** Yvette Rivera, Associate Director, Equity and Access Division (S-32), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W78-306, Washington, DC 20590, 202-366-5131 or by e-mail at [Yvette.Rivera@dot.gov](mailto:Yvette.Rivera@dot.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Electronic Access**

You may retrieve this document online through the Federal Document Management System at <http://www.regulations.gov>. Electronic retrieval instructions are available under the help section of the website.

#### **No FEAR Act Notice**

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” now recognized as the No FEAR Act (Public

Law 107-174). The No FEAR Act was amended on January 1, 2021, by the “Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020.” One purpose of the No FEAR Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.” (Public Law 107-174, Summary). In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” (Public Law 107-174, Title I, General Provisions, section 101(1)). The No FEAR Act also requires the United States Department of Transportation (USDOT) to issue this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

### **Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex (including gender identity and sexual orientation), national origin, age, disability, marital status, genetic information, political affiliation, or in retaliation for a protected activity. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. § 2302(b)(1), 29 U.S.C. § 631, 29 U.S.C. § 633a, 29 U.S.C. § 206(d), 29 U.S.C. § 791, 42 U.S.C. §§ 2000e-16 and 2000ff.

If you believe you have experienced unlawful discrimination on the bases of race, color, religion, sex (including gender identity and sexual orientation), national origin, age, retaliation, genetic information, and/or disability, you must contact a USDOT Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to pursue any legal remedy. A directory of USDOT EEO counselors is available on the Departmental Office of Civil Rights website at <http://www.transportation.gov/civil-rights>; you can also contact the Departmental Office of Civil Rights by phone at 202-366-4648 for more

information. Once you contact the EEO counselor, you will be offered the opportunity to resolve the matter through the informal complaint process; if you are unable to resolve the matter through the informal complaint process, you can file a formal complaint of discrimination with USDOT (See, e.g., 29 C.F.R. Part 1614). Parties who complete the informal complaint process are provided with an electronic Individual Complaint of Employment Discrimination Form. While the Federal Government is on maximum telework, the Departmental Office of Civil Rights is accepting the Form only electronically at <https://secure.dot.gov/form/eeoc> or by e-mail at [Patricia.Fields@dot.gov](mailto:Patricia.Fields@dot.gov). Once the Federal Government is no longer on maximum telework status, you may choose to submit the Form electronically, by mail to the EEO Complaints and Investigations Division of the Departmental Office of Civil Rights at 1200 New Jersey Avenue SE, W76-401, Washington, DC 20590, or by Fax to 202-493-2064. You may also contact the EEO Complaints and Investigations Division, Departmental Office of Civil Rights by phone at 202-366-9370 or by e-mail at [DOCR\\_CMB@dot.gov](mailto:DOCR_CMB@dot.gov) if you need additional assistance.

If you believe you experienced unlawful discrimination based on age, you must either contact an EEO counselor as noted above, or file a civil action in a United States District Court under the Age Discrimination in Employment Act against the head of the alleged discriminating agency. If you choose to file a civil action, you must give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action, and not less than 30 days before filing a civil action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, the EEOC Public Portal at <https://www.eeoc.gov/employees/charge.cfm>, hand delivery at 131 M St. NE, Washington, DC 20507, or Fax at 202-663-7022.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC) using Form OSC-14. Form OSC-14 is available online for electronic submission at the OSC website

<http://www.osc.gov>, under the tab “File a Complaint.” While the Federal Government is on maximum telework, OSC is accepting Form OSC-14 only electronically. When the Federal Government is no longer on maximum telework, you may choose to submit the form electronically or complete Form OSC-14 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW, Suite 218 Washington, DC 20036-4505. You can download Form OSC-14 from <https://osc.gov/Resources/Pages/Forms.aspx>. You also have the option to call the Complaints Examining Unit at 1-800-872-9855 for additional assistance. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action, as such complaints are processed under EEOC’s regulations at 29 C.F.R. Part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 C.F.R. Part 1614 shall not toll the time for filing a civil action.

### **Whistleblower Protection Laws**

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically

prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. § 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel using Form OSC-14. While the Federal Government is on maximum telework, OSC is accepting Form OSC-14 only electronically. When the Federal Government is no longer on maximum telework, you may choose to submit the form electronically or complete Form OSC-14 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW, Suite 218 Washington, DC 20036-4505. You may also contact the USDOT Office of Inspector General Hotline by phone at 1-800-424-8071, by email at [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov), or online at <https://www.oig.dot.gov/hotline>. In addition, when the Federal Government is no longer on maximum telework, you may also contact the USDOT Office of Inspector General by mail at 1200 New Jersey Avenue SE, West Bldg 7<sup>th</sup> Floor, Washington, DC 20590.

### **Retaliation for Engaging in Protected Activity**

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

### **Disciplinary Actions**

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If USDOT takes an adverse action under 5 U.S.C. § 7512 against an employee for a discriminatory act, it

must include a notation of the adverse action and the reason for the action in the employee's personnel record. If OSC initiates an investigation under 5 U.S.C. § 1214, USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation (5 U.S.C. § 1214). Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

### **Additional Information**

For more information regarding the No FEAR Act regulations, refer to 5 C.F.R. Part 724, as well as the appropriate office(s) within your agency (e.g., EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC website at <http://www.eeoc.gov> and the OSC website at <http://www.osc.gov>.

### **Existing Rights Unchanged**

Pursuant to section 205 of the No FEAR Act, neither the No FEAR Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. § 2302(d).

Issued in Washington, DC, on October 26, 2021.

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Irene Marion, Director,  
Departmental Office of Civil Rights,  
U.S. Department of Transportation.  
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